UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1996/12
2 July 1996

ENGLISH
Original: ENGLISH/SPANISH

COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Forty-eighth session
Item 8 of the provisional agenda

THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The impact of the activities and working methods of transnational corporations on the full enjoyment of all human rights, in particular economic, social and cultural rights and the right to development, bearing in mind existing international guidelines, rules and standards relating to the subject-matter

Report of the Secretary-General

GE.96-13058 (E)

CONTENTS

		Paragraphs
Introduction		1 - 6
I.	Science and technology and human rights	7 - 59
	A. The right to take part in cultural life and to enjoy the benefits of scientific progress and its applications	8 - 16
	B. TNCs, transfer of technology and specific human rights	17 - 59
	Right to health	26 - 32
	Right to food	33 - 43
	Right to work and to the enjoyment of just and favourable conditions of work	44 - 49
	Right to information	50 - 59
II.	International legal framework relating to TNCs	60 - 70
III.	Towards a new international regulatory framework	71 - 85
IV.	International cooperation	86 - 102
V.	Science and technology: a people-centred approach	103 - 124

Introduction

1. At its forty-seventh session in 1995, the Sub-Commission, in resolution 1995/31, recalling the provisions of the Charter which established that one of the purposes of the United Nations is to achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights for all, and mindful of the Vienna Declaration and Programme of Action in which the need is underlined for a concerted effort to ensure recognition of economic, social and cultural rights at the national, regional and international levels, requested the Secretary-General to prepare for its consideration at its forty-eighth session a report on the impact of the activities and working methods of transnational corporations on the full enjoyment of all human rights, in particular economic, social and cultural rights and the right to development, bearing in mind existing international guidelines, rules and standards relating to the subject-matter.

2. In paragraph 3 of the resolution, the Sub-Commission also requested the Secretary-General to invite Governments and intergovernmental and non-governmental organizations to submit information on the subject-matter. Accordingly, the Secretary-General, in a note verbale and letter dated 26 March 1996, invited Governments, specialized agencies, as well as intergovernmental and non-governmental organizations to transmit information relevant to the subject-matter.

3. As at 31 May 1996, replies were received from the following Governments, United Nations specialized agencies, intergovernmental and non-governmental organizations.

(a) Governments: Argentina, Germany;

(b) United Nations bodies and specialized agencies: Department for Economic and Social Information and Policy Analysis, Economic Commission for Europe, Economic Commission for Latin America and the Caribbean, United Nations Conference on Trade and Development, United Nations Environment Programme, United Nations University, International Labour Organization, World Health Organization, World Bank, International Monetary Fund, United Nations Industrial Development Organization;

(c) Intergovernmental organization: South Centre;

(d) Non-governmental organizations: African Association of Education for Development; American Association of Jurists; Habitat International Coalition; International Confederation of Free Trade Unions; World Federation of Scientific Workers. The American Association of Jurists also sent information relating to the subject-matter from the Third World Network, the Rural Advancement Foundation International (RAFI), Genetic Resources Action International, Statements of the Regional Meetings of Indigenous Representatives on the Conservation and Protection of Indigenous Knowledge funded by the United Nations Development Programme (UNDP) and the Declaration of NGOs, UNCTAD-IX, 1996. The African Association of Education for Development sent material from World Wildlife Fund, Réseau des ONG européenes

sur les questions agro-alimentaires et le développement (RONGEAD), Consumer Unity and Trust Society and South Asia Watch on Trade, Economics and Environment (SAWTEE).

4. The present report contains a synthesis of the information received on the above subject, but does not include information related to the subject-matter addressed in the report submitted at the previous session of the Sub-Commission. In order to supplement the information received, the present report draws upon relevant information available within the United Nations system, including, inter alia, international instruments, reports and studies prepared by human rights organs. The sources are indicated in the body of the text as well as in the notes found at the end of the present report. The present report should be read in conjunction with the background document prepared by the Secretary-General on the relationship between the enjoyment of human rights, in particular international labour and trade union rights, and the working methods and activities of transnational corporations (E/CN.4/Sub.2/1995/11).

5. Any additional comments and proposals received by the Secretary-General pursuant to his request will be compiled and submitted in addenda to this report.

6. The present report addresses the consequences of the activities and methods of work of TNCs on the transfer of technology and information and their impact on the realization of human rights, in particular economic, social and cultural rights and the right to development, bearing in mind existing international guidelines, rules and standards relating to the subject-matter. Chapter I of the report addresses the human rights issues relevant to the transfer of technology and information; chapter II considers the international legal framework relating to TNCs; chapter III considers the need for a new international regulatory framework; chapter IV presents the relevant norms related to international cooperation; and chapter V considers the need for a people-centred approach to addressing the problems considered in chapter I.

I. SCIENCE AND TECHNOLOGY AND HUMAN RIGHTS

7. The report of the Secretary-General submitted to the Sub-Commission at its previous session (E/CN.4/Sub.2/1995/11) described how the global strategies of TNCs are having an adverse effect on the realization of human rights, in particular international labour and trade union rights. In the context of the present report, it is important to recall the following: "Strategies employed by some TNCs may limit the diffusion of benefits accruing from their activities. Firms may seek to maintain their competitiveness by, for instance, internalizing the market, i.e. by internally controlling and coordinating ownership-specific and location-specific advantages and other assets owned by them, rather than licensing the right to use these assets to indigenous firms located in the country of production. Franchising the conclusion of management contracts, partnerships and joint ventures are other means by which service TNCs are internalizing their advantages while, at the same time, gaining access to foreign markets" (para. 44).

A. The right to take part in cultural life and to enjoy the benefits of scientific progress and its applications

8. The right to take part in cultural life and to enjoy the benefits of scientific progress and its applications is an individual as well as a collective right. The Special Rapporteur of the Sub-Commission, Aureliu Cristescu, pointed out that the right of access to knowledge, the right to take part in scientific advancement and to enjoy its benefits, and to make a contribution towards the enrichment of cultural life, are all part of the right to culture. 1/ According to traditional scientific ethic and international human rights standards, the fruits of scientific labour are to be made available for the benefit of all of humanity. The Declaration of the Principles of International Cultural Cooperation 2/ proclaimed that: "(1) Each culture has a dignity and value which must be respected and preserved. (2) Every people has the right and the duty to develop its culture. (3) In their rich variety and diversity, and in the reciprocal influences they exert on one another, all cultures form part of the common heritage belonging to all mankind" (art. 1).

9. Human rights in the field of culture were first formulated in the Universal Declaration of Human Rights. The Universal Declaration recognized that "Everyone has the right freely to participate in the cultural life of the community ... and to share in scientific advancement and its benefits" (art. 27). Later, the International Covenant on Economic, Social and Cultural Rights likewise recognized the right of everyone "to take part in cultural life" and "to enjoy the benefits of scientific progress and its applications" (art. 15 (1) (a) (b)). It went further in outlining the steps States should take for the full realization of this right, which include "those necessary for the conservation, the development and the diffusion of science and culture" (art. 15 (2)). States parties also undertook "to respect the freedom indispensable for scientific research and creative activity", and recognized the importance of encouraging and developing "international contacts and cooperation in the scientific and cultural fields" (art. 15 (4)). The Declaration of the Principles of International Cultural Cooperation proclaimed that the aims of international cultural cooperation should be, inter alia, "to enable everyone to have access to knowledge ... to share in advances made in science in all parts of the world and in the resulting benefits ..." (art. IV (4)).

10. As a collective right, the right under consideration is associated with right of peoples to self-determination, which includes the exercise of their inalienable right to full sovereignty over all their natural wealth and resources, involves the right of all peoples freely to determine, without external interference, their political status and to pursue their economic, social and cultural development. Cristescu pointed out that, by virtue of the principle of equal rights and self-determination of peoples, all peoples have the right, in full freedom and without external interference, to pursue their cultural development. He drew attention to the interest and concern over "cultural rights" which has many roots, "including the increasing industrialization and mechanization of the world". Developing countries are also concerned with protecting "new indigenous cultures from the onslaught of urbanization and industrialization". Moreover, "the content of cultural rights is closely linked with the political right of self-determination, with

the quest for an indigenous culture as a means of liberation and rebirth, a new meaning for national dignity. For these countries, cultural rights mean, first of all, development, practical education." 3/

11. Provisions relating to the right of peoples to self-determination are common to both international covenants and appear as chapeau articles; as such, the right to self-determination is essential for the realization of all other human rights contained in both instruments. The Declaration on the Right to Development 4/ also recognizes, as a basic condition for the realization of the right to development, "the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources" (art. 1).

12. The Declaration on Social Progress and Development 5/ provided that social progress and development should also aim at the attainment of "equitable sharing of scientific and technological advances by developed and developing countries" as one of its main goals (art. 13). The right of every State "to benefit from the advances and developments in science and technology for the acceleration of its economic and social development" was incorporated in the Charter of Economic Rights and Duties of States 6/ (art. 13 (1)).

13. The Special Rapporteur, Héctor Gross Espiell, pointed out that the economic content of the right of peoples to self-determination, finds its expression in particular "in the right to permanent sovereignty over natural resources" which includes "problems raised by nationalisations and the harmful activities that may be undertaken in this area by transnational or multinational enterprises". 7/ One of the main problems that may arise in connection with the activities of TNCs is that their operation can create monopolistic or oligopolistic positions that have effects on the transfer of technology, conditions of work as well as on important areas like communications.

14. The principle that States have the right to regulate the activities of TNCs in accordance with their own national interests and priorities is recognized in a number of international instruments, in particular General Assembly resolution 1803 (XVII) of 14 December 1962 on "Permanent sovereignty over natural resources". It laid down that the import of foreign capital required for the exploration, development and disposition of such resources should be "in conformity with the rules and conditions which the peoples and nations freely consider to be necessary or desirable with regard to the authorization, restriction or prohibition of such activities" (para. 2). In a preambular paragraph, it considered that "the provision of economic and technical assistance, loans and increased foreign investment must not be subject to conditions which conflict with the interests of the recipient State".

15. The Charter of Economic Rights and Duties of States recognized the primary responsibility of States "to promote the economic, social and cultural development of its people, to choose its means and goals of development, to fully mobilize and use its resources, to implement progressive economic and social reforms and to ensure the full participation of its people in the

process and benefits of development" (art. 7), and laid down, in the following provisions, the right of States to regulate the activities of TNCs in accordance with their own national interests and priorities:

(a) Each State has the right to regulate and exercise authority over foreign investment within its national jurisdiction in accordance with its laws and regulations and in conformity with its national objective and priorities. No State shall be compelled to grant preferential treatment to foreign investments (art. 2 (2) (a));

(b) Each State has the right to regulate and supervise the activities of TNCs within its national jurisdiction and take measures to ensure that such activities comply with its laws, rules and regulations and conform with its economic and social policies. TNCs shall not intervene in the internal affairs of a host State (art. 2 (2) (b));

(c) Each State has the right to nationalize, expropriate or transfer ownership of foreign property ... (art. 2 (2) (c)).

16. The Declaration on the Establishment of a New International Economic Order 8/ proclaimed that such an order should be founded on full respect for, inter alia, the following principle: "full permanent sovereignty of every State over its natural resources and all economic activities. In order to safeguard these resources, each State is entitled to exercise effective control over them and their exploitation with means suitable to its own situation, including the right to nationalization or transfer of ownership to its nationals, this right being an expression of the full permanent sovereignty of the State. No State may be subjected to economic, political or any other type of coercion to prevent the free and full exercise of this inalienable right" (para. 4 (e)).

B. TNCs, transfer of technology and specific human rights

17. The importance of scientific progress and technological development for the realization of other human rights is also recognized in various international human rights instruments. The International Covenant on Economic, Social and Cultural Rights recognized it as a condition for the realization of other economic, social and cultural rights both in a general provision as well as in separate provisions dealing with specific rights. The general provision requires States to take steps, "especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant ..." (art. 2 (1)). The means and methods to be adopted for the realization of some of these rights were developed in subsequent instruments.

18. The United Nations Commission on Transnational Corporations pointed to the importance of access to new technologies and the role of TNCs:

> "Since the 1970s, economic growth has been increasingly associated with new technologies rather than with the use of natural resources, such as energy and minerals. This reflects the fact that production itself has become less materials-intensive and more skill-, knowledge- and technology-intensive ... a rising share of the world's technology flows

> is being controlled by transnational corporations or transnational corporation networks and ... transnational corporations are increasingly important vehicles for technology transfer to host countries ... Thus, while technological developments are offering new opportunities for developing countries with adequate infrastructure and human resources to absorb them, the mechanisms through which such technologies are transmitted are converging on transnational corporations ... The question of access to technology via transnational corporations is further complicated by the new organizational structures that are emerging in the international economy as firms seek to access and obtain the maximum benefit from new technological developments. Increasingly, interfirm networks, whereby firms in a network share the information as well as the costs associated with innovation, are being employed by competing firms in a given industry." 9/

19. On the question of technology and skills transfer, it has been argued that "multinational enterprises (MNEs), as the principal holders of advanced productive technology and managerial skills, can enhance a host economy through the transfer and dissemination of such competitive benefits. This argument depends on the willingness of the MNE to share its competitive advantages with local firms and workers. If the technology and know-how involved are unique, it is unlikely that the MNE will readily give up its lead by disseminating its knowledge". 10/

20. The importance of developing local knowledge and technology for the promotion of development is generally recognized. For instance, the ILO Tripartite Declaration provides that TNCs should adapt technologies to the needs and characteristics of the host country and participate in the elaboration of appropriate technologies in the host country (para. 19). Cristescu underlined that a large part of the nation's resources must be constantly reinvested over a long period, with a view to promoting development, and emphasized that each country must establish its own educational and research systems on the basis of the specific requirements of social production. 11/

21. The recent World Summit for Social Development, in its Programme of Action (A/CONF.166/9), also provides that States should promote a more effective use of existing technologies and indigenous knowledge systems (para. 32 (h)), and encourage labour-intensive investments in economic and social infrastructure that use local resources and create, maintain and rehabilitate community assets in both rural and urban areas (para. 50 (a)).

22. TNCs are strongly influential in the operation of national and international technological infrastructures. One of the main advantages of TNCs is their ability to produce, acquire, master the understanding of and organize the use of technological assets; consequently, they are a major force in shaping international markets for technology. TNCs will seek to control commercial technology markets for maximum gain. However, a distinction may be drawn between markets for conventional technology and markets for high technology which can be developed only by a few very large firms with very high R & D spending and where constant innovation is the basis for competitive success. In high technology areas like electronics, computers, machinery and chemicals, owners will guard the source of their competitive advantage, making

their technology available only on restrictive terms. 12/ According to the World Investment Report (UNCTAD 1995), four-fifths of global civilian research and development is undertaken within TNCs.

23. The weak bargaining position of developing countries, owing to a lack of alternative on the domestic market, may create for the technology owner a monopolistic position with the possibility of setting excessive prices and restrictions on the utilization of imported technology. Moreover, since the transfer of technology by transnational owners generally takes place within the firm through direct investment in a controlled subsidiary, it is less likely to be disseminated in the country where the firm is located. Concerns over such monopolistic tendencies of technology suppliers in developing countries provide justification for a greater regulation on international technology transfer in the interests of these countries, in accordance with their national objectives and priorities.

24. These issues are related to the concept of restrictive business practices as defined by the General Assembly in resolution 35/63 in which it adopted the Set of Multilaterally Agreed Equity Principles and Rules for the Control of Restrictive Business Practices (A/C.2/35/6, annex) which contains rules applicable to TNCs: "'Restrictive business practices' means acts or behaviour of enterprises which, through an abuse or acquisition and abuse of a dominant position of market power, limit access to markets or otherwise unduly restrain competition, having or being likely to have adverse effects on international trade, particularly that of developing countries, and on the economic development of these countries, or which through formal, informal, written or unwritten agreements or arrangements among enterprises have the same impact."

25. The protection of intellectual property rights is one of the main issues which may affect the transfer of technology. Information available on patents suggests that the world's largest industrial firms, most of which are TNCs, account for around half of the world's commercial inventions (UNCTAD 1995, p. XXIX). As pointed out in a WHO report, "Infringements of protection and growing trade in counterfeit goods induced several industrialized countries - the major holders of intellectual property rights - to introduce in GATT negotiations rules for provision of protection, to be applied in all countries. By bringing protection of intellectual property into trade, enforcement could be carried out on a broader basis: countries will have the right to retaliate against infringements in one sector by action in another". The Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs) establishes minimum standards and enforcement measures for the protection of, inter alia, patents, copyrights, trademarks and industrial design, which are to be incorporated into national legislation by all members. Patents will be available for any new, innovative and industrially applicable invention, whether product or process, in all fields of technology, and without discrimination as to place of invention, field of technology or origin of the product. 13/ A South Centre study pointed out that "the new framework of rules governing IPRs is likely to affect adversely the conditions of access to, and use of, technology, and therefore the patterns of industrial and technological development in developing countries. Strengthened IPRs are likely to increase the royalty payments demanded by technology-holders, if they agree to transfer their technology at all, and also to create or reinforce monopolistic positions in the market. 14/

Right to health

26. The WHO report points out that the provisions of the Agreement on TRIPs will directly affect the health sector because for the first time patenting of pharmaceuticals has become compulsory, although there are now few countries which do not yet provide product patents for such products. The new regulations may entail higher prices for patented medicines as pharmaceutical companies recoup research and development costs. This may imply economic and social costs in developing countries, and a possible transfer of income from South to North in the form of royalties from the licensing of patent medicines. Even if most of the essential drugs are off-patent, the fact that the Agreement has introduced the patenting also of processes is a cause of concern. If a new and more efficient technique were to be invented for producing an off-patent drug, that process could be patented; the new product might then be in a dominant market position. The report underlines that, in order to assure that the poorest are not excluded from access to necessary drugs and vaccines, new patent laws will need to be regulated in a way compatible with the interest of public health, minimizing the economic and social costs of changes in production and trade of pharmaceuticals.

27. The South Centre study pointed out: "there is evidence that the patent system has an impact on pharmaceutical prices, particularly if the product itself is protectable. Even after a patent expires and competition from 'generic' products (which are not protected by patents) develops, the original innovator is able to maintain, through brand loyalty, prices higher than those that would be realized in the absence of patents. The introduction of patents for pharmaceuticals in countries that do not currently grant them may, therefore, imply significant social costs due to the higher prices charged for medicaments. Depending on the scope and coverage of the national health systems, there may be also a significant impact on public finances ... the social costs of introducing pharmaceutical patents are likely to outweigh the benefits in the case of most developing countries". 15/

28. These practices of TNCs and recent developments in the area of intellectual property rights may have negative impacts on the right to health in particular. The International Covenant on Economic, Social and Cultural Rights recognized "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health" (art. 12 (1)). Subsequently, the Declaration on Social Progress and Development stipulated the "achievement of the highest standards of health and the provision of health protection for the entire population, if possible free of charge" as one of the main goals to be achieved by social progress and development (art. 10 (d)).

29. The Constitution of the World Health Organization recognizes, "as basic to the happiness, harmonious relations and security of all peoples" inter alia, the following principle: "The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social conditions." The Constitution also recognizes the right to health of all peoples: "The health of all peoples is fundamental to the attainment of peace and security ..."

30. The International Covenant on Economic, Social and Cultural Rights provides that the steps to be taken by the States parties to achieve the full realization of this right should include those necessary for: "(a) the provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child; (b) the improvement of all aspects of environmental and industrial hygiene; (c) the prevention, treatment and control of epidemic, endemic, occupational and other diseases; (d) the creation of conditions which would assure to all medical service and medical attention in the event of sickness" (art. 12 (2)). Furthermore, the Declaration on Social Progress and Development provides that, inter alia, "the provision of free health services to the whole population and of adequate preventive and curative facilities and welfare medical services accessible to all" would be required for the achievement of the objectives of social progress and development (art. 19 (a)).

31. The essential importance of access to scientific knowledge for the realization of the right to health was incorporated in the Constitution of the World Health Organization: "The extension to all peoples of the benefits of medical, psychological and related knowledge is essential to the fullest attainment of health." It also recognized the importance of international cooperation; "[health] is dependent upon the fullest cooperation of individuals and States."

32. Developing countries benefit very little from the large profits obtained by pharmaceutical and biotechnological TNCs that exploit the biological resources extracted from ecosystems of developing countries. The above-mentioned South Centre study pointed out that "one of the most striking asymmetries in North-South relations is the developing countries' wealth in genetic resources, and their lack of technological and financial resources to fully exploit them. With the advent of modern biotechnology, many developing countries fear that their varieties may be genetically changed and that later on the new varieties may be substituted for the original varieties from which they were derived. Moreover, if intellectual property protection for plant varieties is reinforced and extended, it may happen that foreign companies become 'owners' of varieties originating in developing countries." 16/ The Agreement on TRIPs obliges member countries to protect plant varieties by one of three methods: patents, an effective *sui generis* regime or a combination of both.

Right to food

33. It is estimated by FAO that humanity shares a common bowl containing only 20 cultivated crops that sustain 90 per cent of our calories requirements. 17/ All 20 crops originate in developing countries. No country or region can "corner the market" on biodiversity. The role of new technologies is expanding fundamentally and the management of innovation and the role of intellectual property are at the centre of concern. However, there is a policy vacuum with regard to those generating new technologies as well as those responsible for regulating intellectual property. Likewise, indigenous and other rural communities - who have the longest innovative tradition and the largest biodiversity contribution - continue without appropriate recognition and compensation. (See the study on the protection of the cultural and intellectual property of indigenous peoples by

Erica-Irene Daes, Special Rapporteur (E/CN.4/Sub.2/1993/28).) According to the South Centre study, the recognition of patents on plants is strongly resisted by many developing countries for several reasons: first, the patentee would be authorized, in principle, to prohibit the re-use of saved seeds by farmers, with the consequence that costs would rise and that the dominance of large seed companies would be strengthened. Second, while on the one side, breeding based on protected varieties would be banned, on the other, patent protection would not encourage the kind of innovation that generally takes place at the farm level. Third, the patenting of certain traits (e.g. higher oil content, disease resistance, higher yield, etc.) or broad claims on genes, seeds and/or plants may subject the production and marketing of important crops to monopoly rights. And lastly, patenting would contribute to furthering the uniform and monoculture strategies that erode biodiversity, and to increased concentration in farming and in the seeds industry. Small and medium farmers and breeders are likely to suffer the worst impact.

34. In recent years, certain NGOs have actively opposed broad "species-wide" patent claims on food and industrial crops as a threat to world food security. The following is based on information from the Third World Network, Réseau des ONG européenes sur les questions agro-alimentaires et le développement (RONGEAD), South Asia Watch on Trade, Economics and Environment (SAWTEE), Rural Advancement Foundation International (RAFI), and Genetic Resources Action International, submitted by the South Centre, the African Association of Education for Development and the American Association of Jurists. The best known examples are W.R. Grace's controversial patents on all genetically engineered cotton (1992) and soybean (1994). These patents claim ownership over all transgenic varieties of cotton and soybean regardless of the transformation and technique or germplasm used to create them. The database on industrial plant patents of Rural Advancement Foundation International (RAFI) 18/ reveals that many other food and industrial crops are the subject of sweeping patent claims.

35. According to the information, plant patenting is already locking up strategic germplasm in the hands of industrial corporations and undercutting the potential for agricultural research and development in the South. Ethiopia has invaluable coffee germplasm; but its option to use this germplasm to commercially develop and export high-tech coffee varieties could be severely restricted by a patent such as Escagenetic's claim on C. arabica. Even though it is not obliged to recognize a patent in another country, Ethiopia could be prohibited from exporting transgenic coffee beans to where it is recognized. Another example is a fruit, Pentadiplandra brazzeana, which produces "brazzein", a protein which is 2,000 times sweeter than sugar. Its qualities were "discovered" by a researcher of the University of Wisconsin while observing people in Gabon; once in the laboratory, the DNA encoding for the production of P. brazzeana's sweet protein was isolated and sequenced. The University of Wisconsin, which now owns the patent, is considered the "inventor" of brazzein and does not recognize any relationship with Gabon. The system is considered to be fundamentally inequitable because it fails to recognize or reward the contributions of informal innovators - generations of farming women and men, and indigenous peoples who have conserved, nurtured and developed plant germplasm for thousands of years. Informal innovators are effectively marginalized from the rewards and benefits of plant intellectual property systems. The largest holders of plants patents are TNCs based in

industrialized countries which, according to RAFI, account for 79 per cent of all utility plant patents. North-based research institutions and universities follow with 14 per cent. A few patent claims originate in countries of the South; but in all such cases, the assignee of the invention is a TNC in the North. Fourteen TNCs account for 56 per cent of all transgenic plant patents and processes and the concentration of ownership and control of new plant technologies is far greater when patenting agreements are taken into account.

36. The Special Rapporteur on the protection of the cultural and intellectual property of indigenous peoples, Erica-Irene Daes, pointed out in her study that "in principle, the industrial property laws of most countries only protect 'new' knowledge. 'Old' knowledge, such as the herbal remedies used by traditional healers for centuries, has generally been regarded as not patentable. However, biotechnology companies have been able to obtain patents for laboratory-synthesized replicas of molecules found in naturally occurring and widely used species of plants. For example, two companies recently obtained United Nations patents for synthetic derivates of azadirechtim, the active substance in the seeds of Neem trees, used by rural people in India for centuries as a pesticide" (E/CN.4/Sub.2/1993/28, para. 99).

37. The Convention on Biodiversity states that access to and transfer of technology to developing countries shall be provided and/or facilitated under fair and most favourable terms (art. 16 (2)) and that Contracting Parties, recognizing that patents and other intellectual property rights may have an influence on the implementation of the Convention, shall cooperate in this regard subject to national legislation and international law in order to ensure that such rights are supportive and do not run counter to its objectives (art. 6 (5)).

38. In a recent report to the Commission on Sustainable Development, the Secretary-General pointed to two areas of concern which require further analysis. He questioned whether, because of the limited capacity of developing countries to assess adequately the economic value of their biological resources, "the existing systems on intellectual property rights provide them with sufficient safeguards to protect their traditional knowledge and whether it allows them to share equitably in the development of bio-technologies". Another important issue raised is the relationship between the TRIPs Agreement in WTO and the Convention on Biological Diversity (E/CN.17/1996/8, para. 26).

39. Both the Universal Declaration of Human Rights (art. 25) and International Covenant on Economic, Social and Cultural Rights recognize the right to adequate food as part of "the right of everyone to an adequate standard of living for himself and his family" (art. 11 (1)). The Declaration on Social Progress and Development subsequently declared that its achievement involved, inter alia, "the elimination of hunger and malnutrition and the guarantee of the right to proper nutrition" (art. 10 (b)).

40. The International Covenant on Economic, Social and Cultural Rights, recognizing the "fundamental right of everyone to be free from hunger", outlined certain measures, including specific programmes, to be taken by States for the realization of this right. They included measures necessary

"to improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge ..." (art. 11 (2) (a)).

41. On conservation, the Programme of Action on the Establishment of a New International Economic Order 19/ stipulates that all efforts should be made "to refrain from damaging or deteriorating natural resources and food resources, especially those derived from the sea, by preventing pollution and taking appropriate steps to protect and reconstitute those resources" (2 (d)).

42. In addition to a general provision requiring international assistance and cooperation for the realization of the economic, social and cultural rights recognized in the International Covenant (art. 2 (1)), the instrument also contains a separate article underlining the "essential importance of international cooperation" for the realization of the right to food. Subsequently, the Universal Declaration on the Eradication of Hunger and Malnutrition, 20/ reaffirming "the inalienable right to be free from hunger and malnutrition", outlined in greater detail the areas in which such cooperation would be required. In doing so, it underlined that since "society today already possesses sufficient resources, organizational ability and technology and hence the competence to achieve this objective", the eradication of hunger is "a common objective of all the countries of the international community, especially of the developed countries and others in a position to help" (para. 1).

43. The Declaration contains the following provisions on areas of international cooperation that relate to scientific knowledge and technology and which aim at assisting States to fulfil their international obligation under the International Covenant on Economic, Social and Cultural Rights "to improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge ..." (art. 11 (2) (a)):

(a) All countries, and primarily the highly industrialized countries, should promote the advancement of food production technology and should make all efforts to promote the transfer, adaptation and dissemination of appropriate food production technology for the benefit of the developing countries and, to that end, they should, inter alia, make all efforts to disseminate the results of their research work to Governments and scientific institutions of developing countries in order to enable them to promote a sustained agricultural development (para. 8);

(b) To assure the proper conservation of natural resources being utilized, or which might be utilized, for food production, all countries must collaborate in order to facilitate the preservation of the environment, including the marine environment (para. 9);

(c) All developed countries and others able to do so should collaborate technically and financially with the developing countries in their efforts to expand land and water resources for agricultural production and to assure a rapid increase in the availability, at fair costs, of agricultural inputs such as fertilizers and other chemicals, high-quality seeds, credit and technology (para. 10).

Right to work and to the enjoyment of just and favourable conditions of work

44. The right to work and to the enjoyment of just and favourable conditions of work was first recognized in the Universal Declaration of Human Rights (art. 23) and later incorporated in the International Covenant on Economic, Social and Cultural Rights (arts. 6 and 7), which drew particular attention to "safe and healthy working conditions". Equal access to employment and the fair distribution of income as essential for the realization of the right was later incorporated in the Declaration on the Right to Development, which requires States to undertake all necessary measures (art. 8).

45. The importance of technological development and relevant training for the realization of these rights was recognized in the Covenant. With regard to the right to work, it specified that the steps to be taken by States for its full realization should include "technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment ..." (art. 6 (2)).

46. More recently, this requirement was reiterated by the international community in the Copenhagen Declaration and Programme of Action (A/CONF.166/9) adopted at the World Summit for Social Development which requires States to promote technological innovations and industrial policies that have the potential to stimulate employment creation (para. 50 (b)). It also requires States to provide assistance to informal sectors and local enterprises to become more productive and progressively integrated into the formal economy through, inter alia, "new technology and appropriate technological and management skills" as well as "opportunities to upgrade technical and management skills" (para. 51 (f)).

47. With regard to health and safety conditions for workers - an objective of social progress and development, the Declaration on Social Progress and Development provided that they should be improved "by means of appropriate technological and legislative measures and the provision of the material prerequisites for the implementation of those measures, including the limitation of working hours" (art. 20 (b)).

48. A background document submitted to the Sub-Commission at its 1995 session examined in greater detail the impact of the activities and methods of work of TNCs on international labour rights (E/CN.4/Sub.2/1995/11). In that document, attention was drawn to the manner in which skill acquisition and upward mobility for workers in host countries are limited by the practice of TNCs to internally control and coordinate assets owned by them rather than to license the right to their use to indigenous firms, the tendency of TNCs to draw their suppliers abroad with them and to use expatriate personnel. It was pointed out that, especially in developing countries, employees of TNCs and those engaged through subcontracting arrangements have few opportunities for training and advancement. In another report, the Secretary-General pointed to some of the factors that may mitigate or cancel the positive economic effects that TNCs are expected to bring in terms of the right to development. For instance, restrictive practices as regards technology transfer, lack of in-service training and insufficient career incentives for local staff may render difficult the acquisition of skills and the creation of a national pool

of research workers and industrial cadres. The document also showed how TNCs can limit the possibility of States to pursue policies to achieve full and productive employment as called for in article 6 (2) of the International Covenant (E/CN.4/1421, paras. 114-124). The report also examined the activities of TNCs in Export Processing Zones (EPZ) and pointed out that in highly specialized EPZ affiliates and truncated production in plants located in developing countries and in less developed regions within industrialized economies, the transfer of skills to the host country could be minimal.

49. For a detailed consideration of the impact of the TNC activities and working methods on international labour rights, the attention of the Sub-Commission is drawn to that document, which should be read in conjunction with the present report.

Right to information

50. The Universal Declaration of Human Rights (art. 19) and the International Covenant on Civil and Political Rights (art. 19 (2)) both recognize the right of everyone to freedom of expression, which includes "freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice". The Covenant also prohibits "any propaganda for war" (art. 20 (1)) and "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence" (art. 20 (2)).

51. The right to information also figures explicitly in certain provisions of the International Covenant on Economic, Social and Cultural Rights. The provision relating to the right to food requires States parties to improve methods of production, conservation and distribution of food by, inter alia, "making full use of technical and scientific knowledge" and "by disseminating knowledge of the principles of nutrition" (art. 11 (2)(a)). For the full realization of the right to take part in cultural life and to enjoy the benefits of scientific progress and its applications, States parties are required to take those steps that are also necessary, inter alia, for "the diffusion of science and culture".

52. The UNESCO Declaration of the Principles of International Cultural Cooperation underlined that "broad dissemination of ideas and knowledge, based on the freest exchange and discussion, is essential to creative activity, the pursuit of truth and the development of the personality", and stipulated that "in cultural cooperation, stress shall be laid on ideas and values conducive to the creation of a climate of friendship and peace. Any mark of hostility in attitudes and in expression of opinion shall be avoided. Every effort shall be made, in presenting and disseminating information, to ensure its authenticity" (art. VII).

53. On the right of people to be fully and reliably informed, Cristescu stated that "The free flow of information and opinion must improve understanding between them. States have to combat accordingly all propaganda which is either designed or likely to provoke or encourage any threat to the peace, breach of the peace, or act of aggression and which present any danger to the maintenance of friendly relations between peoples and to the

preservation of peace, arising from the publication of inaccurate or false reports and the dissemination of such reports by the other means." 21/

54. The importance of the dissemination of information for social progress and development was also recognized in the Declaration on Social Progress and Development. To this end, it provided for "the dissemination of social information, at the national and international level, to make people aware of changing circumstances in society as a whole, and to educate the consumer" (art. 15 (d)). In recognition of the importance of access to information for social development, the Copenhagen Programme of Action stipulated that States should, inter alia, provide access to information to informal sectors and local enterprises to become more productive and progressively integrated into the formal economy (para. 51 (f)).

55. The right to freedom of expression and information is also recognized as a component right of participation, and public access to information is considered as a relevant factor in assessing participatory processes. The Declaration on the Right to Development recognizes the right of "every human person and all peoples" to participate in economic, social, cultural and political development and requires States to take concrete measures to ensure their active and meaningful participation at all levels of the decision-making process. The Working Group on the Right to Development at its third session underlined the importance of transparency and accountability in the functioning of national and international institutions, in particular the international financial institutions (E/CN.4/1995/27, para. 97).

56. The ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (para. 54) requires States to disclose information considered vital for undertaking meaningful negotiations.

57. On this question the following information was received. The South Centre draw attention to the implications of the provision in the TRIPs Agreement whereby trade secrets (such as confidential know-how or commercial information) are deemed protectable under the rule regarding unfair competition. In addition, obligations are recognized in relation to test results and other data submitted to Governments in order to obtain approval of pharmaceutical and agrochemical products. Such tests and data must be protected, in accordance with the Agreement, against unauthorized disclosure and unfair commercial use. Trade secrets are used to protect subject-matter which is either unpatentable or does not fit the criteria for patenting or because its holder does not want to publish the subject-matter for fear of a competitor using the information. The South Centre pointed out that while, in general, the scenario for the acquisition of technology by developing countries has become more restrictive since the 1970s, as evidenced by policies and measures negatively affecting access to technical and scientific know-how held in industrialized countries, and by a reduction in the flows of technology to developing countries, this trend could be reinforced by the higher levels of protection established by the TRIPs Agreement.

58. According to the American Association of Jurists, in theory, the individual can exercise his right to hold opinions at various levels - in his immediate environment, in the local community and in society at large. The basis of the right to hold opinions is freedom of expression; everyone must be

able to express his opinions without fear of sanctions. However, the exercise of the right to hold opinions in society at large assumes ready access to the mass media. This access is limited by the decision-making powers of the owners of such media. For some time now, ownership of the media has been concentrated in fewer and fewer hands, a process which has intensified in recent decades. The development of communications technology has created huge transnational conglomerates which monopolize the production and use of the physical media - newspapers, periodicals, radio, film, television, videos, satellites, electronic media, etc., and also dominate the marketing and distribution networks. This concentration of the mass media has entered a new phase marked by mergers of communications companies with companies in completely different areas of production. The community of interests created, through financial capital and advertising budgets, between the major communications media and big money in general is becoming a tangible community of interests through the merger of industrial conglomerates of various kinds which own communications media.

59. Furthermore, the American Association of Jurists continues: in theory, of course, any citizen or group of citizens has the right to set up information media. In practice, however, not only is this impossible, but existing media are disappearing or being absorbed by large consortia. There are still a few isolated independent media with a limited audience, but they cannot compete with the major transnational consortia, whose products (informational and other) reach hundreds of millions of people and are the real formers (or rather distorters) of public opinion. This prompts the conclusion that the full exercise of the right to accurate information and to hold opinions calls for the existence of multiple information media and for democratic and transparent management. The trend towards concentration of the communications media in the hands of a small number of transnational corporations militates against the basic requirements for the exercise of the right to information and freedom of expression. International and national rules must be established to safeguard the communications media against the formation of monopolies and develop appropriate policies. The ideas contained in the report of the International Commission for the Study of Communications Problems (MacBride Commission) submitted to the UNESCO General Conference in 1980, provide an essential reference with regard to the policies needed to safeguard these rights.

II. INTERNATIONAL LEGAL FRAMEWORK RELATING TO TNCs

60. The international legal framework relating to TNCs is composed of rules, standards and guidelines that are interrelated and spread throughout the normative international system. Since the activities of TNCs impact on many aspects of life, including work, health, food, economics, environment, trade and transfer of technology, the international community has, since the 1970s, sought a comprehensive, multilateral and universal framework to regulate their conduct.

61. The first two attempts to establish multilateral and comprehensive guidelines were made, almost simultaneously, by the United Nations and the Organisation for Economic Cooperation and Development (OECD). Discussion on OECD guidelines was a response of the major industrialized countries to the economic and political changes of the early 1970s. Meanwhile, in 1974, the

United Nations Economic and Social Council set up the Commission on Transnational Corporations charged with the formulation of a Code of Conduct binding on TNCs.

62. The Code, which was negotiated until 1992, was not adopted. There were major disagreements between industrialized and developing countries, for instance, on reference to international law and on including standards of treatment for TNCs. Nevertheless, as pointed out by the Commission on Transnational Corporations, "the formulation of standards for the behaviour of TNCs in host countries encountered little difficulty, and by 1981, most provisions dealing with the activities of TNCs had been drafted. These provisions shared the common goal of maximizing the contribution of the corporations to the economic and social development of the countries in which they operate and of minimizing their potential negative effect." 22/

63. The OECD Guidelines for Multinational Enterprises, adopted in 1976, is the main instrument applied to industrialized countries. Narrow in geographical scope, it is not universally applicable. Its objective is to encourage these corporations to make a positive contribution to the economies of member countries. It also recommends that member countries cooperate with non-member countries, in particular developing countries, by encouraging positive contributions from TNCs to improve the welfare and living standards of all people. A section on General Policies, contains the principal duties of TNCs, inter alia, to take into account the general policy objectives of the host State, in particular its aims and priorities with regard to economic and social progress including industrial and regional development, the protection of the environment and consumer interests, the creation of employment opportunities, the promotion of innovation and the transfer of technology.

64. In 1977, the International Labour Conference adopted the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, a universally applicable but non-binding code in employment and training, conditions of work and industrial relations. The Declaration establishes the rights and obligations of Governments, employers and trade unions by laying the foundation for a partnership with each party sharing proportionate responsibilities to enhance economic and social development.

65. The elaboration, during the 1970s and 1980s, of the instruments mentioned above, especially the United Nations Code of Conduct, led to the clarification of a number of international standards for the activities of TNCs. According to the Commission on Transnational Corporations, "the efforts of the developing countries to shape a more equitable international economic order led to the elaboration of a number of new concepts and principles notably the principle of permanent sovereignty over natural resources and the notion of development as a legitimate expectation of nations and peoples, which brought important practical consequences for investment relations." 23/

66. As a consequence, a number of general concepts applicable to TNCs and deriving from the basic principle of State sovereignty and jurisdiction were defined. These include observance of local laws and regulations; permanent sovereignty of nations over their natural wealth and resources; the right of every State to prescribe the conditions under which TNCs enter and operate within its national jurisdiction; adherence to the economic and social goals

and objectives of the host country; abstention from corrupt practices in international business transactions; and non-interference in internal political affairs in the host country.

67. More recently, the World Bank and the WTO have sought to regulate investment and other matters relating to TNCs. Rules and structures within the World Bank are: the 1992 Guidelines on the Treatment of Foreign Direct Investment, 24/ the International Center for the Settlement of Investment Disputes (ICSID) and the Multilateral Investment Guaranty Agency (MIGA). WTO rules relating to transnational activities are contained mainly in three agreements: the Agreement on Trade-related Investment Measures (TRIMs); the Agreement on the Trade-related Aspects of Intellectual Property Rights (TRIPs); and the General Agreement on Trade in Services (GATS).

68. The UNCTAD World Investment Report 1994 also refers to the fact that for the past several years, "the OECD has been examining the feasibility of developing a new multilateral investment agreement. This effort has been prompted by the view that, while existing arrangements have been instrumental in promoting liberal investment regimes, the new international investment environment requires a single, comprehensive set of rules on FDI." The main objective of this instrument will be to achieve "highest standards of liberalization and investment protection." 25/

69. It has been stated that, for various reasons, these measures are generally favourable to TNCs and will aggravate the imbalance between TNCs and host country Governments and restrict the range of legal national economic tools available to countries to control the operations of foreign investment. In this regard, the following concerns were raised in information sent by the South Centre, the African Association of Education for Development and the American Association of Jurists (The Uruguay Round, 1995; South Letter; Third World Network, Third World Economics; Declaration of NGOs, UNCTAD-IX, 1996; Réseau des ONG européenes sur les questions agro-alimentaires et le développement (RONGEAD), GATT Briefing: Sur la propriété intellectuelle et le commerce international; Consumer Unity and Trust Society, The Freezing Effect; Rural Advancement Foundation International and Genetic Resources Action International):

(a) Neither the World Bank Guidelines nor the WTO Agreements contain provisions concerning the conduct of foreign investors towards host States; they address only the conduct of host States towards foreign investment. These documents facilitate and give legal rights to international economic expansion such as foreign investments with no regulations to prevent the negative impacts of such activities. They are part of global trends aimed at attracting foreign investment by opening markets, privatization of the public enterprises and services, and weakening regulations and State control over the activities of those enterprises (South Letter, 1993/94; GATT Briefing: Sur la propriété intellectuelle et le commerce international, 1990; The Freezing Effect, 1996; Declaration of NGOs, UNCTAD-IX, 1996; Third World Economics, September 1994, January 1996);

(b) In the case of WTO, there is no reference to its enforcement powers over TNCs. Moreover, the lack of a formal definition of TNCs makes it more difficult to identify the entity involved because they do not legally exist.

However, countries that do not enforce the Agreements may be sanctioned. Enforcement will be instituted not through an independent judiciary but via trade retaliation, rendering weaker countries more vulnerable. Furthermore, the inclusion within its jurisdiction of intellectual property rights, such as patents and lifeforms, investment, services and an integrated dispute settlement system will enable it to impose cross-sectoral retaliation, increasing its powers. The incorporation within the control of WTO of issues not directly related to trade but considered trade-related may jeopardize the sovereign prerogative of States to control their resources and to deal with issues under their jurisdiction (South Letter, 1992/93 and 1993/94; Third World Economics, September 1994 and January 1996; World Wildlife Fund, The UN Biodiversity Convention and the WTO TRIPs Agreement by James Cameron and Zen Makuch);

(c) Granting WTO international jurisdiction over TRIPs would restrict, not liberalize, intellectual property rights. This process is likely to create global monopolies beneficial to TNCs at the cost of public interests. The protection of intellectual property rights may further restrict the dissemination of information on the production of new inventions, even in the area of ecologically sound technologies and health. There is also growing concern from a wide variety of organizations (including development, environmental, scientific, and religious groups) that implementation of the TRIPs Agreement may lead to the compulsory patenting (or other forms of intellectual property protection) in WTO member countries of many types of lifeforms. (The Uruguay Round, 1995; South Letter, 1993/94 and 1995; Third World Economics, September 1994, July 1995; GATT Briefing: Sur la propriété intellectuelle et le commerce international, 1990; Rural Advancement Foundation International; Genetic Resources Action International; World Wildlife Fund, The UN Biodiversity Convention and the WTO TRIPs Agreement by James Cameron and Zen Makuch).

70. In the context of human rights, attention was drawn to the importance of reviewing certain aspects of WTO rules, especially the following related to TRIPs: (a) patent rights of IPR holders versus the public interest and policy of a State and its peoples; (b) patenting of lifeforms; (c) the effect of intellectual property rights and the global monopoly created by TRIPs on the transfer of environmentally sound technologies; (d) the danger of monopolies growing and subsequent protectionism and higher prices in key areas such as agriculture and health.

III. TOWARDS A NEW INTERNATIONAL REGULATORY FRAMEWORK

71. Recognition by the international community of the importance of regulating internationally the activities of TNCs is not, as illustrated above, of recent origin. However, many international rules currently being elaborated as well as those already existing, for instance under WTO and other economic institutions, do not address the social aspects of the activities of these enterprises and cannot, therefore, regulate and promote the social responsibility of TNCs. In the few cases where an instrument has addressed the question of social responsibility, for instance the ILO Tripartite Declaration of Principles, it has been of a voluntary nature and hence not enforceable.

72. Today any international regulatory framework will have to take into account and address the changing global strategies of these corporations, including changes they are bringing about in the labour market structure and in industrial relations. Of importance also is the fact that even though each TNC subsidiary is, in principle, subject to its host country's regulations, the TNC as a whole is not fully accountable to any single country. The same is true for responsibilities they fail to assume for activities of their subsidiaries and affiliates. 26/ The global reach of TNCs is not matched by a coherent global system of accountability.

73. The Commission on Transnational Corporations pointed out that "the closer interweaving of the economies of the world have increased the need for internationally agreed standards. The question is no longer whether international norms should exist but whether the international framework as it exists today is sufficient - or, indeed, adequate - to ensure stable, reliable and mutually beneficial foreign investment relations in the new economic and political landscape." 27/

74. A new comprehensive set of rules should represent standards of conduct for TNCs and set out economic and social duties for them with a view to maximizing their contribution to economic and social development. The approach defined in the Declaration on the Right to Development should provide the framework for the negotiation of such rules. The Working Group on the Right to Development at its third session underlined that the Declaration "should have a decisive influence not only on the domestic policies, but also on the foreign policies of States, either in their bilateral relations or in their contribution to regional and multilateral cooperation" (E/CN.4/1995/27, para. 71). In addition, other human rights standards referred to earlier on in this report, standards contained in the draft United Nations Code of Conduct for TNCs, and the work undertaken by the Commission on Transnational Corporations on this matter, should also be incorporated in the negotiations. In addition, there is a need for a multilateral institution to monitor its implementation.

75. The role of law today is not only to sanction, but also to prevent. UNEP, for instance, recommended certain control measures "to avert future adverse environmental hazards caused by TNCs": (a) the use of environmental impact assessment (EIA) procedures which would require TNCs to provide information on, inter alia, likely environmental impacts of a proposed process or activity, possible alternatives and mitigating measures to be made a prerequisite to any developmental decision-making involving TNCs. Although EIA is generally project-specific, it could still be applied to policies, plans and programmes so as to ensure that environmental considerations are incorporated into the planning for, decisions on and implementation of development activities; (b) Governments to develop and/or strengthen guidelines on environmental standards of the products produced by TNCs to ensure that they do not process and produce substandard products which would affect the sustainability of the environment for the present and future generations.

76. As described in a previous chapter, an approach that separates the economic aspects from the social aspects of development is an obstacle to the realization of the right to development as well as other human rights. The

complementary and multidimensional character of the right to development will not be achieved if only one aspect, as happens in the negotiation of TNC-related documents in economic forums, is considered to the exclusion of others.

77. The globalization of economic activities by TNCs has led to expressions recognizing the increasing responsibility of TNCs towards society. UNCTAD stated that, "the widespread liberalization of policies regarding foreign direct investment (FDI) has given [TNCs] more freedom to make their investment decisions and to operate ... More freedom also means more responsibility, including social responsibility". 28/

78. The responsibilities of TNCs in the context of the human rights has also been the subject of discussion within the United Nations. The General Assembly (resolution 42/115) and the Commission on Human Rights (resolutions 1987/18 and 1988/19) have urged TNCs to ensure that their activities did not adversely affect the process of implementing human rights in developing countries. The Secretary-General stated that, inter alia, TNCs have a duty to promote the realization of the right to development, 29/ and the Working Group on the Right to Development at its second session expressed concern that the system of shared responsibility for the realization of the right to development had not yet been extended to actors in the private sector which were creators of wealth and, hence, agents of growth. It underlined the importance of establishing a regulatory framework at the national and international levels to combat the abuses of economic concentration and restrictive trade practices, to implement policies for the development of human resources and to achieve equity in the allocation of resources and incomes (E/CN.4/1995/11, para. 51).

79. Fundamental human rights principles such as equality, including sovereign equality, non-discrimination and social justice formed the basis of demands for the regulation and supervision of the activities of TNCs. The General Assembly at its sixth special session declared that this would be done "by taking measures in the interest of the national economies of the countries where such Transnational Corporations operate on the basis of the full sovereignty of those countries". Moreover, it provided that an international code of conduct would be formulated, adopted and implemented to: (a) prevent interference in the internal affairs of the countries where they operate; (b) regulate their activities in host countries, to eliminate restrictive business practices and to conform to the national development plans and objectives of countries, and in this context facilitate, as necessary, the review and revision of previously concluded arrangements; (c) bring about assistance, transfer of technology and management skills to developing countries on equitable and favourable terms; (d) regulate repatriation of the profits accruing from their operations, taking into account the legitimate interests of all parties concerned; (e) promote reinvestment of their profits in developing countries.

80. The United Nations draft Code of Conduct provides that "Transnational Corporations shall respect human rights and fundamental freedoms in the countries in which they operate. In their social and industrial relations, transnational corporations shall not discriminate on the basis of race, colour, sex, religion, language, social, national and ethnic origin or

political or other opinion. Transnational Corporations shall conform to government policies designed to extend equality of opportunity and treatment." 30/

81. The OECD Guidelines also recognize that TNCs should promote more responsible operations and relations in order to "improve the welfare and living standards of all people both by encouraging the positive contributions which multinational enterprises can make and by minimizing and resolving the problems which may arise in connection with their activities".

82. The Rio Summit recognized that "business and industry, including Transnational Corporations, and their representative organizations should be full participants in the implementation and evaluation of activities related to Agenda 21". 31/ Recently, the World Summit for Social Development also underlined the responsibilities of TNCs with regard to the environment: TNCs, it provided, should "operate in a framework of respect for the environment while complying with national laws and legislation, and in accordance with international agreements and conventions, and with proper consideration for the social and cultural impact of their activities" (A/CONF.166/9, para. 12 (e)).

83. On the question of technology transfer, the General Assembly provided that all efforts should be made to: (a) formulate an international code of conduct for the transfer of technology corresponding to needs and conditions prevalent in developing countries; (b) give access on improved terms to modern technology and to adapt it to specific economic, social and ecological conditions and varying stages of development in developing countries; (c) expand significantly the assistance from developed to developing countries in research and development programmes and in the creation of suitable indigenous technology; (d) adapt commercial practices governing transfer of technology to the requirements of the developing countries and to prevent abuse of the rights of sellers; (e) promote international cooperation in research and development in exploration and exploitation, conservation and the legitimate utilization of natural resources and all sources of energy (resolution 3202 (S-VI), sect. IV).

84. On the same subject, UNCTAD underlined that, in formulating international rules, attention should be paid not only to the benefits accruing to owners of technology but also to the interests of potential buyers: in establishing international rules which may enable technology owners to appropriate more effectively the fruits of their investments, it would be important not to lose sight of the corresponding need for international action on the "dynamic" aspects of such appropriation, so as to facilitate the transfer and diffusion of propriety technology in the wider interests of both suppliers and potential recipients. This would entail the elaboration of international rules and principles aimed at promoting cooperation, both at the governmental and the enterprise level, in the diffusion and transfer of technology and at ensuring that stronger protection is not used to restrain competition, thus stifling technological innovation and undermining the very objectives for which it was granted. Such a framework of rules and principles would not only bring about a more balanced approach to international technological cooperation, making it easier for technology-acquiring countries to accept the granting of higher standards of protection but would also enhance the predictability and

transparency needed for the free flow of technology among nations ... The failure to adopt an international framework for inter-enterprise and intergovernmental cooperation on the transfer of technology might result in an unbalanced situation which would be to the particular disadvantage of less technologically advanced countries. Such countries would be required to improve the terms of protection of foreign technologies without a concomitant improvement in the terms of transfer of such technologies. 32/

85. That attention should be paid not only to the benefits accruing to owners of technology but also to the interests of potential buyers is reflected in a number of international instruments including the Charter of Economic Rights and Duties of States which stipulates that all States should promote international scientific and technological cooperation and the transfer of technology "with proper regard for all legitimate interests including, inter alia, the rights and duties of holders, suppliers and recipients of technology" (art. 13 (2)).

IV. INTERNATIONAL COOPERATION

86. The recognition of the interrelationship and interdependence between internal justice and international justice and, hence, that social progress and development are the shared concern and responsibility of all States is a fundamental principle first recognized in the Charter of the United Nations. Articles 55 and 56 of the Charter call for international cooperation to promote (a) higher standards of living, full employment, and conditions of economic and social progress and development; (b) solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and (c) universal respect for, and observance of, human rights and fundamental freedoms without distinction as to race, sex, language, or religion.

87. The duty of States to cooperate with each other has been developed and elaborated further in numerous international instruments, particularly in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations. 33/ Its recognition in the area of human rights was first formulated in the Universal Declaration of Human Rights which provides that "everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized" (art. 28). Subsequently, the International Covenant on Economic, Social and Cultural Rights reaffirmed the need for international cooperation, both in a general provision relating to all rights contained therein and, as described earlier in the present report, in separate provisions dealing with specific rights. In the general provision, States parties recognize the essential importance of "international assistance and cooperation, especially economic and technical", for the realization of the rights recognized in the Covenant (art. 2 (1)).

88. The Declaration on the Right to Development, which defines development as a multidimensional and global process encompassing the national and the international, reaffirmed the principle of duty of solidarity and requires all States to cooperate with each other to ensure development and to eliminate obstacles to development (art. 3). Moreover, they should fulfil their rights and duties in a manner that promotes "a new international economic order based

on sovereign equality, interdependence, mutual interest and cooperation among all States as well as to encourage the observance and realization of human rights" (art. 3 (3)). The Special Rapporteur on the new international economic order and the promotion of human rights, Raúl Ferrero, underlined that the new international economic order must be centred on the human being: "the central or basic element in its establishment must be man, whose essential dignity must be defended and protected; it must accordingly be understood that the ultimate goal of the new order is respect for human rights and fundamental freedoms". 34/

89. The World Summit for Social Development reiterated that States should cooperate with each other to ensure development and eliminate obstacles to development and stipulated that "the international community should promote an effective international cooperation, supporting the efforts of developing countries, for the full realization of the right to development and the elimination of obstacles to development, through, inter alia, the implementation of the provisions of the Declaration on the Right to Development" (A/CONF.166/9, para. 17 (c)). It is to be noted that the Working Group on the Right to Development at its first session identified the concentration of economic and political power as an obstacle to the realization of the right to development (E/CN.4/1994/21, para. 65 (h)).

90. The Working Group on the Right to Development has stressed the importance of strengthening effective international solidarity as globalization of economic activities reduces the margin of manoeuvre available to States. In this context, developed countries, particularly the most powerful countries, have major responsibility to create a stable and predictable global economic environment favourable to accelerated and sustainable development. 35/

91. The principles on which international cooperation must be based have been established in a number of international instruments. In this regard, while the attention of the Sub-Commission is drawn to the principles listed in the report of the Secretary-General on a preliminary set of basic policy guidelines on structural adjustment programmes and economic, social and cultural rights (E/CN.4/Sub.2/1995/10, paras. 159-173; 175-184), it is of importance to recall the Copenhagen Programme of Action which stipulated that international support for national efforts "must be in conformity with the Charter of the United Nations, principles of international law and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations" (para. 17).

92. Specific formulations on the duty of international cooperation to democratize access to scientific knowledge and technology can be found in a number of international instruments.

93. The Declaration of the Principles of International Cultural Cooperation proclaims, inter alia, that "cultural cooperation is a right and a duty for all peoples and all nations, which should share with one another their knowledge and skills" (art. V) and that "international cooperation, while promoting the enrichment of all cultures through its beneficent action, shall respect the distinctive character of each" (art. VI). It also declares that the aim of such cooperation, which will cover all aspects of intellectual and

creative activities relating to education, science and culture, shall be, inter alia, to enable everyone to have access to knowledge, to share in advances made in science in all parts of the world and in the resulting benefits, and to raise the level of the spiritual and material life of man in all parts of the world (arts. III and IV).

94. In connection with the realization of social progress and development, the Declaration on Social Progress and Development provides that this will require, inter alia, the following:

(a) The provision to the developing countries of technical, financial and material assistance and of favourable conditions to facilitate the direct exploitation of their national resources and natural wealth by those countries with a view to enabling the peoples of those countries to benefit fully from their national resources (art. 23 (d));

(b) Intensification of international cooperation with a view to ensuring the international exchange of information, knowledge and experience concerning social progress and development (art. 24 (a));

(c) The broadest possible international, scientific and cultural cooperation and reciprocal utilization of the experience of countries with different economic and social systems and different levels of development, on the basis of mutual advantage and strict observance of and respect for national sovereignty (art. 24 (b));

(d) Increased utilization of science and technology for social and economic development; arrangements for the transfer and exchange of technology, including know-how and patents, to the developing countries (art. 24 (c));

(e) The establishment of legal and administrative measures for the protection and improvement of the human environment, at both national and international level (art. 25 (a)).

95. The Charter of Economic Rights and Duties of States contains the following specific provisions relating to scientific and technological cooperation:

(a) All States have the responsibility to cooperate in the economic, social, cultural, scientific and technological fields for the promotion of economic and social progress throughout the world, especially that of the developing countries (art. 9);

(b) Developed countries should cooperate with the developing countries in the establishment, strengthening and development of their scientific and technological infrastructures and their scientific research and technological activities so as to help to expand and transform the economies of developing countries (art. 13 (3));

(c) All States should cooperate in research with a view to evolving further internationally accepted guidelines or regulations for the transfer of technology, taking fully into account the interests of developing countries (art. 13 (4));

(d) All States should promote international scientific and technological cooperation and the transfer of technology, with proper regard for all legitimate interests including, inter alia, the rights and duties of holders, suppliers and recipients of technology. In particular, all States should facilitate the access of developing countries to the achievements of modern science and technology, the transfer of technology and the creation of indigenous technology for the benefit of the developing countries in forms and in accordance with procedures which are suited to their economies and their needs (art. 13 (2)).

96. The last-mentioned was also recognized in the Declaration on the Establishment of a New International Economic Order; the Programme of Action required that all efforts should be made, inter alia, to expand significantly the assistance from developed to developing countries in research and development programmes and in the creation of suitable indigenous technology and "to promote international cooperation in research and development in exploration and exploitation, conservation and the legitimate utilization of natural resources and all sources of energy" (para. IV (c) (e)). It also provided for the formulation of an international code of conduct for TNCs to, inter alia, bring about assistance, transfer of technology and management skills to developing countries on equitable and favourable terms (para. V (c)).

97. The Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind contains the following provisions:

(a) All States shall promote international cooperation to ensure that the results of scientific and technological developments are used ... for the purpose of the economic and social development of peoples and the realization of human rights and freedoms in accordance with the Charter of the United Nations (para. 1);

(b) All States shall cooperate in the establishment, strengthening and development of the scientific and technological capacity of developing countries with a view to accelerating the realization of the social and economic rights of the peoples of those countries (para. 5).

98. The Copenhagen Programme of Action provides that measures should be taken to provide technical assistance and expanded transfer of technology to developing countries to integrate technology and employment policies with other social objectives, and to establish and strengthen national and local technology institutions (para. 50 (d)).

99. In the Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind, the General Assembly proclaimed that all States should promote international cooperation to ensure that the results of scientific and technological development were used in the

interests of strengthening international peace and security, freedom and independence, and also for the purpose of the economic and social development of peoples and the realization of human rights and freedoms in accordance with the Charter of the United Nations, and should refrain from any acts involving the use of scientific and technological achievements for the purposes of violating the sovereignty and territorial integrity of other States, interfering in their internal affairs, waging aggressive wars, suppressing national liberation movements or pursuing a policy of racial discrimination. Such acts are not only a flagrant violation of the Charter of the United Nations and of the principles of international law, but constitute an inadmissible distortion of the purposes that should guide scientific and technological developments for the benefit of mankind (paras. 1 and 4).

100. With regard to the activities of TNCs in general, the Lima Declaration and Plan of Action on Industrial Development and Cooperation adopted at the Second General Conference of the United Nations Industrial Development Organization in 1975 provides that developed countries should cooperate in ensuring that the activities of TNCs are in keeping with the economic and social objectives of the developing countries in which they operate.

101. The Charter of Economic Rights and Duties of States stipulates that States should cooperate with each other in the exercise of the right of every State "to regulate and supervise the activities of TNCs within its national jurisdiction and take measures to ensure that such activities comply with its laws, rules and regulations and conform with its economic and social policies. TNCs shall not intervene in the internal affairs of a host State" (art. 2 (2) (b)).

102. In connection with the role of international institutions, human rights bodies have pointed out that the international financial and economic institutions directly involved in designing, promoting and implementing development programmes are not exempt from considering the human rights implications of their work programme and have underlined the importance of not separating the economic and monetary aspects from the social aspects as well as the need to enhance the dialogue between international social and humanitarian agencies and international institutions responsible for financial and trade questions. The World Conference on Human Rights in the Vienna Declaration and Programme of Action called on regional organizations and prominent international and regional finance and development institutions to assess also the impact of their policies and programmes on the enjoyment of human rights (A/CONF.157/23, Part II, para. 2).

V. SCIENCE AND TECHNOLOGY: A PEOPLE-CENTRED APPROACH

103. There is general recognition that science and technology is of fundamental importance for the promotion of social and economic development, including its application to the solution of environmental problems, as well as for the realization of economic, social and cultural rights and the right to development. At the same time, it is recognized that, while technology and know-how can provide ever-increasing opportunities to better the conditions of life of peoples and nations, they can also give rise to social problems, cause

a deterioration of the human environment, serve as an instrument of domination over peoples, groups or individuals, and threaten the human rights and fundamental freedoms of the individual.

104. In this connection, Cristescu drew special attention to the role of TNCs: "Science in general is a positive force in society for increasing production and improving the conditions of life of the citizens. At the same time, there is the new phenomenon of the large multinational corporations, which often pollute the air and water and disrupt the economic and social fabric of developing countries." 36/ He underlined that "science and technology should be subordinated not to profit aims but to the needs of society. Thus, they should be systematically directed towards raising the living standards of the producers and serve to develop personality, help to develop the creative character of labour, to level out the main differences between conditions in the city and in rural areas, between mental and physical labour, to limit heavy physical and monotonous work in order to create the material prerequisites under which labour, through which man fashions himself, can become his main need." 37/ The Secretary-General has stated elsewhere that the management of the world's economic future can no longer be left to the law of profit. 38/

105. The negative consequences of technology is a subject of debate particularly in the context of international technology transfers. The preoccupation of the international community in this regard is reflected in various international instruments which stipulate clearly that the objective of science and technology should be the pursuit of social goals and the realization of human rights.

106. In the Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind, 39/ the General Assembly, inter alia, recognized that scientific and technological progress is of great importance in accelerating the social and economic development of developing countries and, aware that the transfer of science and technology is one of the principal ways of accelerating the economic development of developing countries, proclaimed that States should adopt measures, including in some cases legislative measures, aimed at the following social objectives:

(a) "To ensure that scientific and technological achievements satisfy the material and spiritual needs for all sectors of the population" (para. 3);

(b) "To extend the benefits of science and technology to all strata of the population and to protect them, both socially and materially, from possible harmful effects of the misuse of scientific and technological developments ..." (para. 6);

(c) "To ensure that the utilization of scientific and technological achievements promotes the fullest realization of human rights and fundamental freedoms without any discrimination whatsoever on grounds of race, sex, language or religious beliefs (para. 7);

(d) "To prevent and preclude the utilization of scientific and technological achievements to the detriment of human rights and fundamental freedoms and the dignity of the human person" (para. 8).

107. The Declaration on Social Progress and Development stipulated that social progress and development should aim at the attainment of the following main goals, inter alia, "a steady increase in the use of science and technology for the benefit of the social development of society" and "the protection and improvement of the human environment" (art. 13).

108. The ILO Tripartite Declaration, referring to employment creation, provided that "when investing in developing countries, transnational corporations should bear in mind the importance of using employment-creating technologies" (para. 19). In the Copenhagen Programme of Action, the international community required States to promote technological innovations and industrial policies that have the potential to stimulate employment creation and to consider their impact on vulnerable and disadvantaged groups (para. 50 (b)).

109. The Declaration on the Right to Development, adopted by the General Assembly in 1986, provides a general framework within which the question of access to and application of science and technology should be approached. The Declaration on the Right to Development, for the first time, challenged several traditional concepts of development. By redefining "development" as "a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom", it placed the human person, individually and collectively, squarely in the centre of all economic activity - as both the central subject and beneficiary of development.

110. The Declaration on the Right to Development approaches development in broad and comprehensive terms, as a multidimensional and global process encompassing the economic, social, cultural, civil and political spheres which are interdependent and complementary. It underlines a number of important principles on which development must be based including equality, non-discrimination, solidarity, self-reliance and social justice. Respect for these principles cannot be waived even in the short term. The progress sought is not just economic and financial efficiency and an improvement in the main macroeconomic indicators, but one that can be measured in terms of social justice, equality, well-being and respect for the fundamental dignity of all individuals, groups and peoples.

111. In policy terms, this approach requires that social objectives are an integral part of macroeconomic policies and not separated from the economic and monetary aspects of development. The Working Group on the Right to Development at its second session underlined that the approach adopted should not be partial and fragmented or implemented in a manner that is selective and hierarchical. The economic and monetary aspects of development should not be dissociated from its social aspects (E/CN.4/1995/11, para. 88). An approach that separates economic development from social development and macroeconomic policies from social objectives was identified by the Working Group as an

obstacle to the realization of the right to development (para. 41). The Declaration of Philadelphia, adopted at the General Conference of the ILO (1944), provided that all policies and measures, in particular those of an economic and financial character, should be judged and accepted only in so far as they may be held to promote and not to hinder the achievement of the right of all human beings, without discrimination, to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity (annex II (a)).

112. The interdependence between the economic, social and cultural aspects was also recognized in the Declaration of the Principles of International Cultural Cooperation, which covers all aspects of intellectual and creative activities relating to education, science and culture. It proclaimed that "Nations shall endeavour to develop the various branches of culture side by side and, as far as possible, simultaneously, so as to establish a harmonious balance between technical progress and the intellectual and moral advancement of mankind" (art. II).

113. The importance of maintaining an equilibrium between the economic and the social was also recognized in the Declaration on Social Progress and Development. It provided that social progress and development should aim, inter alia, at "the establishment of a harmonious balance between scientific, technological and material progress and the intellectual, spiritual, cultural and moral advancement of humanity" (art. 13 (b)).

114. The people-centred approach to development implies that what is understood by "development" is subjective. The human person, individually and collectively, as the central subject of development, must be the active participant - determining the objectives to be achieved as well as the means and methods to be adopted - and beneficiary of development. Its definition, orientation and implementation can only be carried out with the effective participation of all in decisions that affect their lives.

115. In the Copenhagen Programme of Action the World Summit for Social Development reiterated that "human persons are at the centre of social development" and to this end called on the international community to support national efforts and to ensure that this is fully reflected in the programmes and activities of subregional, regional and international organizations" (para. 17 (d)).

116. It follows from the above that no one model of development is universally applicable to all cultures and peoples and cannot be imported nor be based on the charity of developed countries. It can only be the result of national policy and strategy which takes into consideration the specific context of each country while acknowledging economic realities. 40/ Hence, States have primary responsibility for the creation of national and international conditions favourable to the realization of the right to development and for the formulation of national development policies, thus recognizing their central role in development. The Declaration on the Right to Development provides that these policies should "aim at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom" (arts. 2 (3) and 3 (1)).

General Assembly resolution 42/115 and Commission on Human Rights resolutions 1987/18 and 1988/19, referring specifically to TNCs, emphasized the role of the public sector in promoting the economic development of developing countries and urged TNCs to ensure that their activities did not adversely affect the process of implementing human rights in developing countries. The requirement that the human person, individually and collectively, should be at the centre of development also figures in a number of articles of international instruments referring to international cooperation and will be considered in a later chapter of the present report.

117. Principles such as equality, non-discrimination and social justice are fundamental to all human rights, including economic, social and cultural rights and the right to development. They are equally applicable to relations between individuals and groups at the national level, as well as between peoples and States at the international level.

118. The state of economic and social development or underdevelopment throughout the world reflects a profound disequilibrium in the production and use of resources between nations and shows increasingly larger differences in the production and use of scientific knowledge and techniques. Cristescu pointed out that "the developing countries are receiving too little of the technology needed to accelerate their economic growth and the gap between the developed and developing world is growing wider. The 'brain drain' deprives the developing world of many much-needed scientists, doctors, engineers, etc. ... Many of the ill effects of pollution fall on those least able to ward off its adverse consequences, while the benefits of industrial development are mainly reaped by the industrialized countries. The sites chosen for atmospheric atomic testing are usually in undeveloped parts of the world, far from the population of the countries which make the bomb. Modern fishing gear permits the fleets of technologically advanced countries to exploit the natural resources adjacent to developing countries and to pollute the seas. The local pollution of the environment in developing countries is often caused by foreign corporations that exploit local resources." 41/

119. Concerns related to the adverse consequences on human rights of the concentration of wealth have been expressed in human rights bodies. The Sub-Commission, for instance, in its resolution 1995/30, endorsed the conclusion initially established in the preparatory document prepared by Asbjørn Eide (E/CN.4/Sub.2/1994/21) and repeated in José Bengoa's preliminary report (E/CN.4/Sub.2/1995/14) that the concentration of wealth constitutes a serious obstacle to the realization of human rights, be they economic, social, cultural, political or civil. Cristescu, in his study on the right of peoples to self-determination, referred to the problem of monopoly control by TNCs and developing countries: "The concentration of economic power in large multinational corporations is a phenomenon that particularly affects the developing countries. The less developed countries need the capital and technological processes these corporations can bring, but they are very difficult to control because of their size and nature. In several technological fields, certain companies have a virtual monopoly of a particular product." 42/ He underlined that "only when democracy is also extended to the economy will science and technology play a genuine social role." 43/

120. Following from the recognition that "all cultures form part of the common heritage belonging to all mankind", 44/ the international community has, in numerous international instruments, provided for its equitable distribution to all without discrimination. This was first implicitly recognized in the wording of the Universal Declaration and the International Covenant on Economic, Social and Cultural Rights.

121. Subsequently, the Declaration on Social Progress and Development recognized the principle of "equitable sharing of scientific and technological advances by developed and developing countries" as one of the main goals of social progress and development (art. 13), and proclaimed that "social progress and development require ... the establishment, in conformity with human rights and fundamental freedoms and with the principles of justice and the social function of property, of forms of ownership of land and of the means of production which preclude any kind of exploitation of man, ensure equal rights to property for all and create conditions leading to genuine equality among people" (art. 6). It also declared that "social progress and development shall aim at achieving ... the elimination of all forms of foreign economic exploitation and all other practices and ideologies contrary to the purposes and principles of the Charter of the United Nations" (art. 12 (c)).

122. On the question of democratization of access to productive resources, the Declaration on the Right to Development stipulates measures to be taken at both the national and the international levels, recognizing the interdependence and interrelationship between national justice and international justice. At the national level, it requires the participation of all sectors, on the basis of equality, in the benefits of development, and requires States to undertake "all necessary measures for the realization of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income" and to carry out "appropriate economic and social reforms ... with a view to eradicating all social injustices" (art. 8 (1)). The Copenhagen Programme of Action of the World Summit for Social Development contains various measures aimed at the diffusion of new and appropriate technology by increasing the access to it of small farmers and agricultural workers, women, the informal sectors and local enterprises, as well as persons with disabilities and vulnerable groups "on the basis of equality" (paras. 32 (b) and 51 (f)). The Global Consultation on the Right to Development also emphasized that "measures formulated to promote the right to development must focus on the democratic transformation of existing political, economic and social policies and structures." 45/

123. At the international level, the Declaration on the Right to Development calls upon States "to promote a new international economic order based on sovereign equality, interdependence, mutual interest and cooperation among all States, as well as to encourage the observance and realization of human rights" (art. 3 (3)). In the Copenhagen Programme of Action, the international community undertook to promote the realization of the right to development through, inter alia, "equitable economic relations and a favourable economic environment at the international level" (para. 15 (c)).

124. Human rights bodies have drawn attention to the ways in which the globalization of the economy, particularly through the adoption of structural

adjustment programmes, is reducing the ability of peoples and developing country States to formulate social, economic, monetary and fiscal policies in terms of their own economic and social goals. It is also argued that the agreement to establish the World Trade Organization may exacerbate existing inequalities by increasing competition and concentration. This in turn would lead to further indebtedness, unequal participation in international trade, increase in the transfer of resources from the South to the North and uneven development at national, regional and international levels. 46/ The Working Group on the Right to Development pointed out at its second session that, since the establishment of new rules governing international trade relations cannot by itself protect the interests of developing countries, efforts should be made to ensure that developing countries do not lag behind as a result of new rules governing international trade relations (E/CN.4/1995/1, para. 91).

Notes

1/ Aureliu Cristescu, The Right to Self-Determination: Historical and Current Development on the Basis of United Nations Instruments (United Nations publication, Sales No. E.80.XIV.3), para. 653.

2/ Proclaimed by the General Conference of the United Nations Educational, Scientific and Cultural Organization at its fourteenth session, 1966.

3/ Cristescu, op. cit., paras. 584, 650 and 654.

4/ General Assembly resolution 41/128 of 4 December 1986.

5/ General Assembly resolution 2542 (XXIV) of 11 December 1969.

6/ General Assembly resolution 3281 (XXIX) of 12 December 1974.

7/ Héctor Gross Espiell, The Right to Self-Determination (United Nations publication, Sales No. E.79.XIV.5), para. 136.

8/ General Assembly resolution 3201 (S-VI) of 1 May 1974.

9/ E/C.10/1992/5, paras. 8, 11, 12.

10/ P. Muchlinski, Multinational Enterprises and the Law, Oxford, Blackwell, 1995, p. 432.

11/ Cristescu, op. cit., para. 358 (c).

12/ Muchlinski, op. cit., p. 428.

13/ WHO Task Force on Health Economics, Health Economics, WTO: What's in it for WHO?, WHO/TFHE/95.5, p. 33.

14/ South Centre, "The Uruguay Round Intellectual Property Rights Regime: Implications for Developing Countries". Paper prepared for the Eleventh Summit of the Non-Aligned Movement (Cartagena, 18-20 October 1995).

15/ Ibid.

16/ Ibid. See also E/CN.4/Sub.2/1995/26, para. 23.

17/ FAO, AGROSTAT Database on Food Balance Sheets (Intzake), 1991.

18/ RAFI's database is based on patents issued at the United States Patent and Trademark Office from 1985 through July 1995.

19/ General Assembly resolution 3202 (S-VI) of 1 May 1974.

20/ E/CONF.65/20 (United Nations publication, Sales No. E.75.II.A.3), chap. V. Adopted by the World Food Conference (Rome, 5-16 November 1974) convened under General Assembly resolution 3180 (XXVIII) and endorsed by the General Assembly in resolution 3348 (XXIX) of 17 December 1974.

21/ Cristescu, op. cit., para. 671.

22/ E/C.10/1992/8, para. 24.

23/ Ibid., para. 18.

24/ World Bank, Report to the Development Committee and Guidelines on the Treatment of Foreign Direct Investment, in Legal Framework for the Treatment of Foreign Direct Investment, vol. II, 1992.

25/ UNCTAD, World Investment Report 1994 (United Nations publication, Sales No. E.94.II.A.14, chap. VII, Box VII.1, p. 280.

26/ These were the focus of the background document submitted to the Sub-Commission at its previous session (E/CN.4/Sub.2/1995/11).

27/ E/C.10/1992/8, para. 34.

28/ UNCTAD, op. cit., p. 313.

29/ See The regional and national dimensions of the right to development: study by the Secretary-General (E/CN.4/1421), 1980.

30/ See E/1990/94, section on "Respect for human rights and fundamental freedoms", p. 7.

31/ Report of the United Nations Conference on Environment and Development (Rio de Janeiro, 3-14 June 1992), vol. I (United Nations publication, Sales No. E.93.I.8), Agenda 21, chap. 30, para. 30.1.

32/ TD/CODE TOT/55, paras. v and 93.

33/ General Assembly resolution 2625 (XXV) of 24 October 1970.

34/ Raúl Ferrero, The New International Economic Order and the Promotion of Human Rights (United Nations publication, Sales No. E.85.XIV.6), para. 286.

35/ See reports of the Working Group on the Right to Development on its second and third sessions, op. cit., paras. 50, 57, 91 and 94, and para. 78 respectively. See also D. Türk, Second progress report on the realization of economic, social and cultural rights, (E/CN.4/Sub.2/1991/17).

36/ Ibid., para. 656.

37/ Ibid., para. 662.

38/ Address of the Secretary-General to the World Economic Forum, SG/SM/95/15.

39/ General Assembly resolution 3384 (XXX) of 10 November 1975.

40/ Report of the Global Consultation on the Right to Development as a Human Right, (Geneva, January 1990) (HR/PUB/91/2), para. 155 and report of the Working Group on the Right to Development on its third session (E/CN.4/1995/27), paras. 76 and 77.

41/ Cristescu, op. cit., para. 638.

42/ Ibid., para. 639.

43/ Ibid., para. 663.

44/ Declaration of the Principles of International Cooperation, op. cit., art. I (3).

45/ Report of the Global Consultation, op. cit., para. 149.

46/ See reports of the Working Group on the Right to Development on its first, second and third sessions (E/CN.4/1994/21 and Corr.1 and 2, E/CN.4/1995/11 and E/CN.4/1995/27).